

REMARKS

Claims 20-25 are pending the application; Claims 20-25 stand rejected. Claims 20-23 are amended, support for the amendments can be found in the specification as originally filed and no new matter has been added. Claims 24 and 25 are cancelled.

CLAIMS 20, 22 AND 24 REJECTED UNDER 35 USC 102(e)

Claims 20, 22 and 24 are rejected under 35 USC 102(e) as allegedly anticipated. Claims 20 and 22 are amended to recite ‘a combination of Ginkgo Biloba, Ginseng, and plant matter from a plant of the genus *Uncaria*, species *tomentosa*’. Claim 24 is cancelled.

MPEP section 2111.01 states that during examination, the words of the claims are given their plain meaning unless the applicant has provided a clear definition in the specification and then the claims must be interpreted as broadly as their terms reasonably allow. “Plain meaning” is also defined in MPEP section 2111.01 as the meaning the term would have to a person of ordinary skill in the art in question at the time of the invention. Plain meaning can be provided by dictionary definitions so long as the definition is consistent with the context of word usage in the specification.

Therefore, for claims to be construed, the plain meaning of the claims’ terms is first determined and then, after all terms have definition, the claim as a whole is interpreted and given scope.

Hastings discloses a composition for promoting healthy joints which includes, among other components, plant extracts of ashwangandha (*Withania sominfera*), also known as Indian ginseng. In contrast, the claimed invention is directed to a composition for disrupting amyloid fibrils comprising of, among other components, Ginseng. ‘Ginseng’ is not defined in the specification of the pending application and Applicant therefore submits that according to MPEP section 2111.01, this term should be given its plain meaning. The person of ordinary skill in the art in question at the time of the invention would look to the plain dictionary meaning of the word. The definition of Ginseng from several sources is provided below. As requested, paper copies of the definitions are attached as supporting evidence in ‘Appendix’ section.

The definition of 'Ginseng' according to:

1. Concise Oxford Dictionary - 1. a plant tuber credited with various tonic and medicinal properties. 2. the plant from which this tuber is obtained, native to east Asia and North America, [Genus *Panax*: several species]
2. Encyclopedia Britannica Online – Either of two herbs of the family Araliaceae or their roots, which have long been used as a drug in East Asia and as the ingredient for a stimulating tea. *Panax quinquefolium*, the North American ginseng, is native from Quebec and Manitoba southward to the coasts of the Gulf of Mexico.
3. Yourdictionary.com – any of several perennial herbs (genus *Panax*) of the ginseng family, with thick, forked, aromatic roots, esp. a Chinese species (*P.pseudoginseng*) and a North American species (*P.quinquefolium*)
4. Wikipedia.org – Ginseng refers to species within *Panax*, a genus of 11 species of slow growing perennial plants with fleshy roots, in the family Araliaceae. They grow in the Northern Hemisphere in eastern Asia (mostly northern China, Korea, and eastern Siberia), typically in cooler climates; *Panax vietnamensis*, discovered in Vietnam, is the southernmost ginseng found. This article focuses on the Series *Panax* ginsengs, which are the adaptogenic herbs, principally *Panax ginseng* and *Panax quinquefolius*. Ginseng is characterized by the presence of ginsenosides.

The definitions provided are all in agreement and all make specific reference to the fact that ginseng includes generally plants of the family, Araliaceae, and/or more specifically plants of the genus, *Panax*. Furthermore the definitions provided do not conflict with the context of use of the term 'Ginseng' in the specification or the claims of the pending application. Thus the plain meaning of the term 'Ginseng' is herbs in the family Araliaceae and/or specifically plants of the genus, *Panax*.

An excerpt from Wikipedia.com (please see attached copy in Appendix) describes Ashwagandha as (*Withania somnifera*), also known as Indian ginseng, Winter cherry, Ajagandha, Kanaje Hindi and Sann Al Ferakh, is a plant in *Solanaceae* or nightshade family. Ashwagandha (*Withania somnifera*), although commonly known as Indian ginseng, is in fact a member of the nightshade or *Solanaceae* family.

Applicant respectfully submits that the person skilled in the art, upon reading the term ‘Ginseng’ in the context of the claims would understand what plants would reasonably be considered to be included in the definition of Ginseng, i.e. plants of the family, Araliaceae, and/or the genus, *Panax* and certainly not plants that lie outside the family Araliaceae. Applicant traverses the rejection on the basis that the ‘plain meaning’ of ‘Ginseng’ as defined above has not been fully considered.

Once the plain meaning of the claims’ terms is determined, then the claim as a whole is interpreted and given scope. MPEP 2111.01 states that “claims must be interpreted *as broadly as their terms reasonably allow*”. Given the plain meaning of the term ‘Ginseng’ to include plants of the family, Araliaceae, and/or the genus, *Panax*, the broadest interpretation that the term ‘Ginseng’ *reasonably allows* is all plants belonging to the family Araliaceae. Applicant submits that to include within the scope of the claim, the plant Ashwangandha is not a reasonable interpretation given the plain meaning of ‘Ginseng’ as such inclusion actually confounds the plain dictionary meaning of ‘Ginseng’.

Applicant submits that as ashwangandha (*Withania somnifera*), does not fall within the plain dictionary meaning of ‘Ginseng’ and would not be *reasonably* considered to be included in the broadest interpretation of claims 20 and 22 given the definition of the term ‘Ginseng’. Hastings does therefore not anticipate the claimed invention and Applicant respectfully requests that the rejection be withdrawn.

CLAIMS 20 TO 25 STAND REJECTED UNDER 35 USC 103(a)

Claims 20 to 25 stand rejected under 35 USC 103(a) as allegedly obvious in view of Hastings in combination with Hsia. Claims 20 and 22 have been amended as discussed above. Claims 21 and 23 have been amended to recite ‘plant of the genus *Uncaria*, species *tomentosa*, Dong Quai and Gingko Biloba, in combination...’ Claims 24 and 25 are cancelled.

As neither Hastings nor Hsia, alone or in combination disclose neither ‘Ginseng’, nor ‘Dong Quai’, Applicant respectfully requests that the obviousness rejection be withdrawn taking into consideration, the claims as amended.

**CLAIMS 20 TO 25 REJECTED UNDER OBVIOUSNESS-TYPE DOUBLE
PATENTING**

Claims 20 to 25 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting. Applicant submits that a terminal disclaimer will be timely filed once allowable subject matter is indicated.

Applicant believes it has responded fully to all of the concerns expressed by the Examiner in the Office Action. Applicant respectfully requests reexamination of all rejected claims and early favorable action on them. If the Examiner has any further concerns, Applicant requests an immediate call to Rebecca Eagen at (425) 823-0400 ext. 39.

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Respectfully submitted,


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